

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WALTER J. BARBEE,

Petitioner,

v.

RON VAN BOEING,

Respondent.

Case No. 09-5667RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation by Magistrate Judge Karen L. Strombom (Dkt. 14). The Court has considered the Report and Recommendation, the Plaintiff's Objections to Report and Recommendation, Defendant's Response to Plaintiff's Objections, and the remainder of the file herein.

Petitioner Barbee presented the following claims for relief in his federal habeas petition:

- (1) My 14th Amendment right to due process was violated because I plead guilty without understanding the consequences of the law.
- (2) Ineffective assistance of counsel. My lawyer misinformed me of the sentencing consequences of the plea.

Dkt. 14, p. 6-7.

The Magistrate Judge recommends that Mr. Barbee's first claim for federal habeas relief be denied. Dkt. 14, p. 18. The Report and Recommendation states that "[a]ny misstatement by the judge or the plaintiff's attorney at the later sentencing hearing does not support the conclusion that the plaintiff did not know the consequences of his plea at the time he entered into

1 his plea before the judge.” *Id.* The Report and Recommendation concludes by stating the “[t]he
2 undersigned finds that the decision of the Washington Court of Appeals was not contrary to, or
3 an unreasonable application of, clearly established Supreme Court precedent, nor was its
4 determination of the facts objectively unreasonable, in light of the evidence that was presented
5 during Mr. Barbee’s state court proceeding.” *Id.*

6 The Magistrate Judge also recommends that Mr. Barbee’s second claim be denied. Dkt.
7 14, p. 23-24. The Report and Recommendation states that “Mr. Barbee fails to show that the
8 Washington Court of Appeals’ decision in his case was an objectively unreasonable application
9 of *Strickland v. Washington*, or was an objectively unreasonable determination of the facts in
10 light of the evidence presented during his State court proceeding.” Dkt. 14, p. 23.

11 Mr. Barbee objects to the Report and Recommendation, stating “Mr. Barbee asserts that
12 with the facts stated in his Habeas Corpus, he is entitled to a full review and an evidentiary
13 hearing to ascertain the fact [sic] to bring forth to this court for an unbiased and unprejudiced
14 review.” Dkt. 15, p. 2.

15 The Magistrate Judge’s Report and Recommendation is detailed and well reasoned, and
16 the Petitioner’s objections are without merit. The Petitioner has not shown that an evidentiary
17 hearing is required in this situation. The facts presented in the Report and Recommendation are
18 sufficient, and the Court can make a decision based on the record. Therefore, the Report and
19 Recommendation should be adopted.

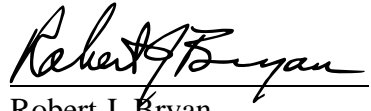
20 The Court does hereby find and **ORDER**:

21 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 14);

22 (2) Petitioner’s writ of habeas corpus (Dkt. 3) is **DENIED** and this action is
23 **DISMISSED WITH PREJUDICE**; and

24 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
25 Respondent and to the Hon. Karen L. Strombom.

1 DATED this 17th day of May, 2010.

2
3 
4 Robert J. Bryan
5 United States District Judge
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28